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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter IV. Registration of a notice with respect to a security right

A. General rules

Article 26. Establishment of the general security rights registry

The Registry [is] [will be] established [the enacting State to specify whether the Registry is established by this Law or will be established later through a regulation or another law, which will enact the provisions of the Annex to this Law] for the purpose of receiving, storing and making accessible to the public information in registered notices with respect to security rights in accordance with this Law and [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law].

[*Note to the Working Group: The Working Group may wish to note that this article has been revised to be aligned with recommendation 1 of the* Registry Guide. *The Working Group may also recall that at its twenty-fifth session it decided to separate legal registration rules that were retained in this chapter and technical registration issues that were moved to the annex of the draft Model Law (see A/CN.9/802, paras. 12-14). This approach is based on the assumption that depending on its legislative policy and drafting technique, each enacting State may implement the registration-related rules partly in the secured transactions law and partly in administrative rules (a Regulation), or in a separate law (see* Registry Guide, *subpara. 9(m)). However, the result may be more difficult for enacting States to understand and implement. For example, it may not be easy for an enacting State to understand why there is no article in the draft Model Law on the rejection of a registration which is a fundamental issue or the authorization to by the grantor to a third party to request information about a registration. The Working Group may also wish to consider which of the definitions of the* Registry Guide *may need to be added to article 2. The Working Group may also wish to note that that some modern secured transactions laws provide for the registration of notices other than those relating to security right (e.g. enforcement notices and notices of preferential claims) and consider whether registration of such notices should be foreseen in the draft Model Law or at least discussed in the Guide to Enactment (see* Registry Guide, *paras. 51 and 52).*]

Article 27. Public access to registry services

1. The security rights registry must be open to the public in accordance with paragraph 2 and [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law].

2. Any person may submit a notice or a search request to the Registry in accordance with the provisions of this Law and [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law].

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 54, subparagraphs (c) and (f) of the* Secured Transactions Guide *and 4 of the* Registry Guide. *The Working Group may also wish to note that the Guide to Enactment will clarify that, in line*

with recommendation 54, subparagraph (j) of the Secured Transactions Guide *and recommendation 5 of the* Registry Guide, *the Registry should be electronic, if possible (which means that it may be hybrid or paper), and consider whether the draft Model Law should be drafted to accommodate all types of registry.*]

Article 28. Grantor's authorization for registration

1. Registration of an initial notice is [ineffective unless] [effective if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law] and is] authorized by the grantor in writing, before or after registration.

2. Registration of an amendment notice is [ineffective unless] [effective if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law] and is] authorized by the grantor in writing, before or after registration, if the amendment notice:

(a) Contains a description of [additional] encumbered assets [not included in the security agreement or other authorization of the grantor];

(b) Contains the identifier(s) and addresses of one or more than one [additional] grantor [not included in the security agreement or other authorization of the grantor]; [or]

[(c) Increases the maximum amount for which the security right to which the registration relates may be enforced;] [or]

[(d) [The enacting State to specify any additional amendment notices that require authorization by the grantor in writing]].

3. Except as provided in paragraph 4, registration of an amendment notice that contains the identifier and address to one or more than one additional grantor is [ineffective unless] [effective if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law] and is] authorized by the additional grantor in writing.

4. [Notwithstanding paragraph 3, no] [No] authorization by the additional grantor is required if the additional grantor is a transferee of an encumbered asset described in a previously registered notice to which the amendment notice relates.

5. A security agreement [that meets the requirements of article 6], or a written agreement that amends the security agreement, is sufficient to constitute authorization by the grantor for the registration of an initial or amendment notice covering the assets described therein.

6. Evidence of the existence of the authorization of the grantor is not required for the Registrar to accept the registration of an initial or amendment notice.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 71 of the* Secured Transactions Guide *and 7, subparagraph (b) of the* Registry Guide. *The Working Group may also wish to consider the alternatives included within square brackets in paragraphs 1 and 2 ("is ineffective unless" or is "effective if"; see also article 38 below) and in subparagraph 2(a). The second set of bracketed words in subparagraph 2(a) is intended to clarify that, if the secured creditor forgets to set out in the initial notice*

some assets included in the security agreement or other authorization of the grantor and then realizes this error, the amendment notice does not "contain a description of additional assets" and would not require the grantor's separate authorization. The Working Group may wish to note that in paragraph 6 reference is made to the "registrar" rather than to the "registry", as the latter term is defined as a system and not as a person (the term "registrar" may need to be defined to include the registry staff). The Working Group may also wish to note that the Guide to Enactment will explain that registration of an amendment notice that adds encumbered assets or increases the maximum amount may affect intervening secured creditors, and therefore takes effect only when the registration of the amendment notice (not the initial notice) becomes effective (see article 31, para. 1 below). The Guide to Enactment will also explain that there is no need to register an amendment notice or obtain the authorization of the grantor with respect to "additional assets" that: (a) are the proceeds of encumbered assets described in a previously registered notice, as the security right extends to proceeds by law (see art. 10, para. 1); and (b) are cash proceeds (money, receivables, negotiable instruments or funds credited to a bank account) (see art. 17, para. 1).]

Article 29. A notice may relate to more than one security right

A single notice may relate to one or more than one security right created by the grantor in favour of the same secured creditor whether they arise under one or more than one security agreement between the same parties.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 68 of the* Secured Transactions Guide *and 14 of the* Registry Guide.]

Article 30. Time when a notice may be registered

An initial or amendment notice may be registered at any time, including before the conclusion of the security agreement, to which the notice relates, or, in the case of a future asset, before the grantor acquires rights in the asset or the power to encumber it, provided that registration is authorized by the grantor in accordance with article 28.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 67 of the* Secured Transactions Guide *and recommendation 13 of the* Registry Guide.]

Article 31. Time of effectiveness of a registered notice

1. The registration of an initial or amendment notice is effective from the date and time when the information in the notice is entered into the registry record so as to be accessible to searchers of the public registry record.

[2. The date and time when the information in an initial or amendment notice is entered into the registry record so as to be accessible to searchers is indicated in the public registry record.]

[3. Information in an initial or amendment notice is entered into the registry record as soon as practicable after the notice is submitted and in the order in which it was submitted.]

4. The registration of a cancellation notice is effective from the date and time when the information in any previously registered notice to which it relates is no longer accessible to searchers of the public registry record.

[5. The date and time when the information in any initial or amendment notice to which a cancellation notice relates is no longer accessible to searchers is indicated in the registry record.]

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 70 of the* Secured Transactions Guide *and 11 of the* Registry Guide. *The Working Group may also wish to consider whether paragraphs 2, 3 and 5 of this article that appear within square brackets should be deleted and matters addressed therein should be addressed in the Annex to the draft Model Law.*]

Article 32. Period of effectiveness of a registered notice

Option A

1. A registered notice is effective for [a period of time, such as five years, to be specified by the enacting State].

2. The period of effectiveness of a registered notice may be extended by the registration of an amendment notice indicating this intent in the designated field within [a period of time, such as six months, to be specified by the enacting State] before its expiry.

3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for [the period of time specified in paragraph 1] beginning from the time the current period would have expired if the amendment notice had not been registered.

Option B

1. A registered notice is effective for the period of time indicated by the registrant in the designated field of the notice.

2. The period of effectiveness of a registered notice may be extended at any time before its expiry by the registration of an amendment notice that indicates in the designated field a new period of effectiveness.

3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period of time indicated in the amendment notice beginning from the time the current period would have expired if the amendment notice had not been registered.

Option C

1. A registered notice is effective for the period of time indicated by the registrant in the designated field of the notice, not exceeding [a maximum period of time, such as 20 years, to be specified by the enacting State].

2. The period of effectiveness of a registered notice may be extended within [a period of time, such as six months, to be specified by the enacting State] before its expiry by the registration of an amendment notice that indicates in the designated

field a new period of effectiveness not exceeding [the maximum period of time specified in paragraph 1].

3. The registration of an amendment notice in accordance with paragraph 2 extends the period of effectiveness for the period of time specified in the amendment notice beginning from the time the current period would have expired if the amendment notice had not been registered.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 69 of the* Secured Transactions Guide *and 12 of the* Registry Guide. *The Working Group may also wish to note that the Guide to Enactment will explain that the period of effectiveness can be indicated by a reference to a number of years or an expiry date, as specified by the Registry.*]

Article 33. Organization of information in registered notices

The registry record is organized so that the information in a registered initial and in any associated registered notice can be retrieved by a search of the registry record that uses the identifier of the grantor or the registration number assigned to the initial notice as the search criterion.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 16 of the* Registry Guide.]

Article 34. Information required in an initial notice

An initial notice must contain the following items of information in the designated field for each item:

(a) The identifier and address of the grantor [and any additional grantor information that the enacting State may decide to permit or require to be entered to assist in uniquely identifying the grantor];

(b) The identifier and address of the secured creditor or its representative; [and]

(c) A description of the encumbered asset in accordance with article 9;

[(d) The period of effectiveness of the registration];[1] and

[(e) A statement of the maximum amount for which the security right to which the registered notice relates may be enforced.][2]

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 57 of the* Secured Transactions Guide *and 23 of the* Registry Guide. *The Working Group may also wish to consider whether articles 12-14 of the Annex should be moved to a new article that would elaborate on the items set out in article 34. The Working Group may also wish to note that many modern registries provide for serial number registration of serial number assets and consider whether serial number registration should be addressed in the draft Model Law or discussed only in the Guide to Enactment*

[1] This provision will be necessary, if the enacting State implements option B or C of article 32.

[2] This provision will be necessary if the enacting State includes in its law article 6, subparagraph 3(e) of the draft Model Law.

(see Secured Transactions Guide, *chap. IV, paras. 34-36 and* Registry Guide, *paras. 131-134). The Working Group may also wish to note that the Guide to Enactment will discuss the possibility of using unique numbers as grantor identifiers and of the Registry being connected to an identity-number database to ensure that the name and identity number entered match. This procedure could work for both types of grantors, individuals and entities, or only for one type depending on the availability of identity numbers. In such systems, a registration will not be processed if the two do not match (this would be the only exclusion to the general rule that the registry does not verify the veracity of the information). With respect to subparagraph (e), the Guide to Enactment will refer to the discussion in the* Registry Guide *(see paras. 200-204).*]

Article 35. Impact of a change of the grantor's identifier

1. If the grantor's identifier changes after a notice is registered and the secured creditor registers an amendment notice adding the new identifier of the grantor within [a short period of time, such as 30 days, to be specified by the enacting State] after the change, the security right to which the notice relates remains effective against third parties and retains its priority.

2. If the grantor's identifier changes after a notice is registered and the secured creditor registers an amendment notice adding the new identifier of the grantor after the expiration of the time period indicated in paragraph 1:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the change in the grantor's identifier but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after the change in the grantor's identifier but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 61 of the* Secured Transactions Guide. *The Working Group may also wish to note that the Guide to Enactment will explain that: (a) if the secured creditor registers the amendment notice during the "grace period" contemplated in paragraph 1 of this article, the third-party effectiveness and priority of its security right is preserved as against the categories of competing claimants described in this article even if they acquired their rights prior to the registration of the amendment notice; (b) while a secured creditor's failure to register an amendment notice adding the grantor's new identifier has the negative priority consequences against the categories of competing claimants described in this article, it does not prejudice the third-party effectiveness or priority of its security right as against other categories of competing claimants such as the grantor's insolvency representative; (c) while the "grace period" begins to run from the time of the name change regardless of whether or not the secured creditor actually knew about the name, later registration of a security right amendment notice change after the expiry of that grace period will still protect the secured creditor as against the categories of competing claimants described in this article if their rights arise after the registration; and (d) an amendment notice must be*

registered for the purposes of the rules stated in this article only if the name change would make the registration irretrievable by a searcher using the new name of the grantor as the search criterion. The Working Group may wish to consider whether all those issues should be addressed explicitly in this chapter and/or the priority chapter.]

Article 36. Impact of errors in required information

1. An incorrect statement of the grantor identifier in a notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion.

2. An incorrect or insufficient statement of the information required in a notice other than the grantor's identifier does not render the registration ineffective unless the error would seriously mislead a reasonable searcher.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 64-66 of the* Secured Transactions Guide *and 29 of the* Registry Guide.]

Article 37. Impact of a transfer of an encumbered asset

Option A

1. If an encumbered asset covered by a registered notice is transferred after the notice is registered and the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor within [a short period of time, such as 30 days, to be specified by the enacting State] after the transfer, the security right to which the initial notice relates remains effective against third parties and retains its priority.

2. If the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor after the expiration of the time period indicated in paragraph 1:

(a) A competing security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

Option B

1. If an encumbered asset covered by a registered notice is transferred after the notice is registered and the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor within [a short period of time, such as 30 days, to be specified by the enacting State] after the transfer, the security right to which the initial notice relates remains effective against third parties and retains its priority.

2. If the secured creditor registers an amendment notice adding the transferee's identifier and address as a new grantor after expiration of the time period indicated

in paragraph 1, starting when the secured creditor acquires knowledge about the transfer of the encumbered asset:

(a) A security right with respect to which a notice is registered or which is otherwise made effective against third parties after the transfer but before the registration of the amendment notice has priority over the security right to which the amendment notice relates; and

(b) A person that buys, leases or licenses the encumbered asset after its transfer but before the registration of the amendment notice acquires its rights free of the security right to which the amendment notice relates.

Option C

A security right to which the notice relates remains effective against third parties and retains its priority notwithstanding a transfer of the encumbered asset covered by the registered notice.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 62 and paragraphs 78-80 of chapter IV of the* Secured Transactions Guide. *The Working Group may wish to consider making a decision as to which of the options in this article is preferable, rather than leaving the matter to each enacting State. The Working Group may also wish to consider whether it should be clarified in this article or in the Guide to Enactment that this article does not apply to outright transfers of receivables. Outright transfers of receivables fall within the scope of the Law and the transferee must register in order to make its right effective against third parties in the same way as a secured creditor that acquires a security right in receivables. The Working Group may also wish to note that the Guide to Enactment will clarify that, if a State adopts option C, it will not need to implement article 40, which includes the same rule with respect to transfers of intellectual property. The Guide to Enactment will also clarify that, in accordance with article 34, subparagraph (a), the identifier and the address of the transferee should be entered in the appropriate fields of the notice.*]

Article 38. Secured creditor's authorization

1. The person named in the initial notice as the secured creditor may register an amendment or cancellation notice relating to that initial notice at any time.

Option A

2. The registration of an amendment or cancellation notice is effective [if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law]] regardless of whether it is authorized by the person named in the initial notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

Option B

2. The registration of an amendment or cancellation notice is effective [if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law]] regardless of whether it

is authorized by the person named in the initial notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

3. The registration of an amendment or cancellation notice which is not authorized by the person named in the initial notice as the secured creditor does not affect the priority of the security right to which it relates as against the right of a competing claimant over which the security right had priority before the registration of the amendment or cancellation notice.

Option C

2. The registration of an amendment or cancellation notice is [ineffective unless] [effective if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law] and is] authorized by the person named in the initial notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

Option D

2. The registration of an amendment or cancellation notice is [ineffective unless] [effective if it meets the requirements of this Law [the enacting State to specify the regulation or law implementing the provisions of the Annex to this Law] and is] authorized by the person named in the initial notice as the secured creditor in writing or ordered by [the enacting State to specify a judicial or administrative authority], before or after registration.

3. The registration of an amendment or cancellation notice which is not authorized by the person named in the initial notice as the secured creditor does not affect the priority of the security right to which it relates as against the right of a competing claimant which would have priority if the registration were treated as effective and which was acquired in reliance on a search of the registry record made after the registration of the amendment or cancellation notice, provided the competing claimant did not have knowledge that the registration of the notice was unauthorized at the time it acquired its right.

[*Note to the Working Group: The Working Group may wish to note that the matter addressed in this article was not dealt with in the* Secured Transactions Guide *but it was discussed in the* Registry Guide *(paras. 258-268). The Working Group may also wish to consider whether options C and D of this article are compatible with the* Secured Transactions Guide *(rec. 74) and the* Registry Guide *(rec. 20), according to which upon registration of a cancellation notice, information contained in a registered notice is to be removed from the public registry record and archived. The Working Group may wish to consider whether the text of this article is to cover the situation where the secured creditor named in the initial notice assigned its rights. Presumably, an amendment notice will be registered naming the assignee as the secured creditor and any subsequent amendment or cancellation notice would require the authorization of the secured creditor named in that amendment notice. The Working Group may also wish to consider whether the Guide to Enactment should clarify that the choice of a rule (option) would depend on the design of the registry system. For example, in*

a two-level security registry system where the user obtains a password protected account and gets a special code to register an amendment or cancellation, option A may be appropriate. The Working Group may also wish to consider whether the draft Model Law or the Guide to Enactment should identify the court or other authority that has jurisdiction for all issues arising under the draft Model Law.]

Article 39. Compulsory registration of an amendment or cancellation notice

1. [As soon as practicable, the] [The] secured creditor must register an amendment or cancellation notice, as the case may be, if:

(a) The registration of an initial or amendment notice has not been authorized by the grantor at all or the notice contains information that exceeds the scope of the grantor's authorization;

(b) The registration of an initial or amendment notice has been authorized by the grantor but the authorization has been withdrawn and no security agreement has been concluded;

(c) The security agreement to which the registered notice relates has been revised in a way that makes some or all of the information contained in the notice incorrect or insufficient and the grantor has not otherwise authorized the registration; or

(d) The security right to which the notice relates has been extinguished by full payment or other performance of the secured obligation, or otherwise and there is no further commitment by the secured creditor to extend credit secured by the encumbered assets to which the notice relates.

[2. If any of the conditions set out in paragraph 1 are met, the grantor is entitled to request the secured creditor in writing that the secured creditor register an amendment or cancellation notice.]

3. [If the secured creditor does not comply with the grantor's written request provided in paragraph 2 within [a short period of time, such as 15 days, to be specified by the enacting State] after receipt of the grantor's request, the] [The] grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, through [a summary judicial or administrative procedure to be specified by the enacting State].

4. The grantor is entitled to seek the registration of an amendment or cancellation notice, as the case may be, in accordance with the procedure referred to in paragraph 3 even before the expiry of the time period specified therein, provided that [the enacting State should introduce appropriate measures to protect the secured creditor].

5. An amendment or cancellation notice, as the case may be, ordered to be registered in accordance with the procedure referred to in paragraph 3 is registered by

Option A

The registrar as soon as practicable after the notice is submitted to the registry for registration with a copy of [the relevant judicial or administrative order to be specified by the enacting State] attached.

Option B

[The judicial or administrative officer to be specified by the enacting State] who ordered the notice to be registered as soon as practicable after the issuance of [the relevant judicial or administrative order to be specified by the enacting State] with a copy thereof attached.

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 72 of the* Secured Transactions Guide *and 33 of the* Registry Guide. *The Working Group may wish to consider the bracketed text in paragraph 1 and paragraph 2. The Working Group may also wish to consider whether the provisions of this chapter or the Guide to Enactment should clarify which secured creditor is meant in this chapter, the secured creditor identified in a registered notice or the actual secured creditor (e.g. a transferee of a receivable that has not registered a notice with respect the transfer).*]

B. Asset-specific rules

Article 40. Impact of a transfer of encumbered intellectual property on the effectiveness of the registration

A security right in intellectual property to which the notice relates remains effective against third parties and retains its priority notwithstanding a transfer of the encumbered intellectual property covered by the registered notice.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, while this article is based on recommendation 244 of the* Intellectual Property Supplement, *its formulation has been aligned with the formulation of option C of article 37 of the draft Model Law. The Guide to Enactment will also explain that, if a State adopts option C of article 37, it will not need to implement this article. Finally, the Guide to Enactment will explain that this article does not address the question whether the transferee acquires the encumbered intellectual property free or subject to the security right (which is addressed in art. 43).*]

Chapter V. Priority of a security right

A. General rules

Article 41. Competing security rights

1. Subject to articles 42-51, priority among competing security rights created by the same grantor in the same encumbered asset is determined according to the order of third-party effectiveness.

[2. Priority among competing security rights created by the different grantors in the same encumbered asset is determined according to the order of third-party effectiveness[, provided that, upon transfer of the encumbered asset, the secured creditor of each grantor complies with the requirements of article 37, option A or B, to preserve the third-party effectiveness and priority of its security right].]

[3]. The priority of a security right is not affected by a change in the method by which it is made effective against third parties, provided that there is no time period during which the security right is not effective against third parties.

[4.] The priority of a security right in the proceeds of an encumbered asset is the same as the priority of the security right in that asset.

[5.] If two or more security rights in the same tangible asset continue in a mass or product as provided in article 11, they retain the same priority as the security rights in the asset had as against each other immediately before the asset became part of the mass or product.

[6.] If security rights in separate tangible assets continue in the same mass or product and each security right is effective against third parties, the secured creditors are entitled to share in the aggregate maximum value of their security rights in the mass or product according to the ratio of the value of the respective security rights.

[7.] For purposes of paragraph [6], the maximum value of a security right is the lesser of the value determined in accordance with article 11 and the amount of the secured obligation.

[8.] An acquisition security right in a separate tangible asset that continues in a mass or product and is effective against third parties has priority as against a security right granted by the same grantor in the mass or product.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that paragraph 1 of this article reflects in general terms recommendation 76 of the* Secured Transactions Guide, *and refers to third-party effectiveness (which requires creation and a third-party effectiveness act), while advance registration (i.e. before the creation of the security right or conclusion of the security agreement and thus before third-party effectiveness is achieved) is addressed in article 51. The Working Group may wish to consider paragraph 2, which has been added within square brackets to deal with priority conflicts among security rights granted by the different grantors (i.e. the grantor and successive transferees of the same encumbered asset). The Working Group may also wish to note that the Guide to Enactment will explain that paragraph 1 deals with conflicts of priority: (a) among security rights that were made effective against third parties by registration (in the security rights registry); (b) among security rights that were made effective against third parties otherwise than by registration (in the security rights registry); and (c) among security rights that were made effective against third parties by registration (in the security rights registry) and security rights that were made effective against third parties otherwise than by registration (in the security rights registry). The Working Group may wish to note that paragraph 2 of this article may need to be coordinated with articles 18 and 19 (see A/CN.9/WG.VI/WP.63). The Working Group may also wish to note that paragraph 4 has been revised to deal with the priority of a security right in the proceeds of an encumbered asset, rather than with the time of third-party effectiveness as recommendation 100 of the* Secured Transactions Guide *on which it was originally based. The Guide to Enactment will explain that article 10 is sufficient to provide that a security right in an encumbered asset extends to its identifiable proceeds and article 17 is sufficient to provide that, once the security right in an asset is effective against third-parties, the security right in its*

proceeds is effective against third parties as of the same time without any further action.]

Article 42. Rights of buyers or other transferees, lessees or licensees of an encumbered asset

1. If an encumbered asset is sold or otherwise transferred, leased or licensed and a security right in that asset is effective against third parties at the time of the sale or other transfer, lease or licence, a buyer or other transferee, lessee or licensee acquires its rights subject to the security right except as provided in this article.

2. A buyer or other transferee of an encumbered asset acquires its rights free of the security right, if the secured creditor authorizes a sale or other transfer of the asset free of the security right.

3. The rights of a lessee or licensee of an encumbered asset are not affected by a security right if the secured creditor authorizes the grantor to lease or license the asset unaffected by the security right.

4. A buyer of a tangible encumbered asset sold in the ordinary course of the seller's business acquires its rights free of the security right, provided that, at the time of the conclusion of the sale agreement, the buyer does not have knowledge that the sale violates the rights of the secured creditor under the security agreement.

5. The rights of a lessee of a tangible encumbered asset leased in the ordinary course of the lessor's business are not affected by the security right, provided that, at the time of the conclusion of the lease agreement, the lessee does not have knowledge that the lease violates the rights of the secured creditor under the security agreement.

6. Subject to the rights of a secured creditor with a security right in intellectual property in accordance with article 59, the rights of a non-exclusive licensee of an intangible encumbered asset licensed in the ordinary course of the licensor's business are not affected by the security right, provided that, at the time of the conclusion of the licence agreement, the licensee does not have knowledge that the licence violates the rights of the secured creditor under the security agreement.

7. If a buyer or other transferee of a tangible encumbered asset acquires its rights free of a security right, any subsequent buyer or other transferee also acquires its rights free of that security right.

8. If the rights of a lessee of a tangible encumbered asset or licensee of an intangible encumbered asset are not affected by the security right, the rights of any sub-lessee or sub-licensee are also unaffected by that security right.

[*Note to the Working Group: The Working Group may wish to consider that the fact that exceptions to the rule in paragraph 1 of this article apply only to buyers or other transferees, lessees or licensees for value, and not to donees or other gratuitous transferees, is sufficiently clear or should be explicitly clarified in this article or in the Guide to Enactment (see* Secured Transactions Guide, *chap. V, para. 89).*]

Article 43. Rights of buyers or other transferees, lessees or licensees of an encumbered asset in the case of specialized registration[1]

1. A security right in an asset that is made effective against third parties by registration in [the enacting State to specify the specialized registry or title certificate, if any] has priority over a security right in the same asset which is made effective against third parties by any other method, regardless of the order of registration.

2. If an encumbered asset is sold or otherwise transferred, leased or licensed and, at the time of the sale or other transfer, lease or licence, a security right in that asset is effective against third parties by registration in [the enacting State to specify the specialized registry or title certificate, if any], the buyer or other transferee, lessee or licensee acquires its rights subject to the security right, except as provided in paragraphs 2-8 of article 42.

3. If a security right in an asset that may be made effective against third parties by registration in [the enacting State to specify the specialized registry or title certificate, if any], has not been made effective against third parties by such registration, a buyer or other transferee acquires its rights free of the security right and a lessee's or licensee's rights are unaffected by the security right.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that recommendation 77, subparagraph (b) of the* Secured Transactions Guide *is not reflected in this article as the priority of rights registered in a specialized registry is a matter for the relevant specialized registration law.*]

Article 44. Rights of the insolvency representative

[1.] A security right that is effective against third parties under this Law at the time of the commencement of insolvency proceedings with respect to the grantor remains effective against third parties and retains the priority it had before the commencement of insolvency proceedings with respect to the grantor, unless another claim has priority pursuant to [the enacting State to specify its insolvency law].

[[2.] If a security right is effective against third parties at the time of commencement of insolvency proceedings with respect to the grantor, the secured creditor is entitled to take any action necessary to maintain the third-party effectiveness and priority the security right had before commencement of the insolvency proceedings.

[3.] An acquisition security right that is effective against third parties by the registration of a notice in the Registry after the commencement of insolvency proceedings with respect to the grantor and within the period specified in article 47, subparagraph (a)(ii), has the priority under this Law that it acquires as a result of such registration.]

[*Note to the Working Group: The Working Group may wish to note that paragraph 1 of this article is based on recommendation 4 of*

[1] This rule is an example for the consideration of enacting States that have a specialized registration regime.

the UNCITRAL Legislative Guide on Insolvency Law *and recommendations 238 and 239 of the* Secured Transactions Guide. *paragraph 2 is based on recommendation 238 of the* Secured Transactions Guide *(see A/CN.9/830, para. 87) and paragraph 3 is intended to state explicitly what is implicit in paragraph 1 of this article and article 47 of the draft Model Law. As these recommendations refer to what the insolvency law should provide, the Working Group may wish to consider whether this article should be deleted.*]

Article 45. Preferential claims

The following claims arising by operation of other law have priority over a security right that is effective against third parties but only up to [the enacting State to specify the amount for each category of claim]:

(a) [...];

(b) [...].[4]

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that: (a) this article applies outside insolvency, while a similar rule is recommended in the* Secured Transactions Guide *with respect to preferential claims in the case of the grantor's insolvency (see rec. 239); (b) a notice with respect to preferential claims may be registered in the security rights registry; (c) in the case of enforcement, if a preferential creditor does not take over the enforcement process, its claim will have to be paid ahead of the claims of secured creditors; and (d) secured creditors should obtain representations from grantors about debts to preferential creditors and otherwise address the possible existence of such claims. The Guide to Enactment will also give examples of claims that may be listed in this article, such as claims of service providers or unpaid sellers or suppliers of goods (see A/CN.9/830, para. 89).*]

Article 46. Rights of judgement creditors

1. Subject to the rights of acquisition secured creditors in accordance with article 49, the rights of an unsecured creditor that has obtained a judgement or provisional order ("judgement creditor") have priority over a security right, if, before the security right is made effective against third parties, the judgement creditor [the enacting State to specify the steps necessary for a judgement creditor to acquire rights in the encumbered asset or to refer to the relevant provisions of other law with respect to judgements or provisional court orders].

2. The priority of the rights of the judgement creditor referred to in paragraph 1 does not extend to credit disbursed by the secured creditor:

(a) Within [the enacting State to specify a short period of time, such as 30 days] from the time the judgement creditor notified the secured creditor that it had taken the steps referred to in paragraph 1; or

(b) Pursuant to an irrevocable commitment in a fixed amount or an amount to be fixed pursuant to a specified formula of the secured creditor to extend credit, if the commitment was made before the judgement creditor notified the secured creditor that it had taken the steps referred to in paragraph 1.

[4] The enacting State will not need this article if it does not have any preferential claims.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that this article is intended to reflect recommendation 84 of the* Secured Transactions Guide. *The Guide to Enactment will also explain that, in some States, these steps involve registration of a notice in the security rights registry, seizure of assets or service of a garnishment order, matters that may be usefully clarified in the Guide to Enactment. In States that require registration of a notice with respect to these enforcement steps, judgement creditors have the same priority rights as secured creditors, that is, in other words, the general first-to-register priority rule applies. The Working Group may also wish to consider whether the judgement creditor should have priority under paragraph 2 of this article only if the secured creditor received the notification and, if so, whether this matter should be clarified in paragraph 2 of this article, another article for the receipt rule to apply throughout the draft Model Law or in the Guide to Enactment.*]

Article 47. Non-acquisition security rights competing with acquisition security rights[5]

Alternative A[6]

1. Except as provided in article 43 with respect to a security right that is made effective against third parties by registration in [the enacting State to specify the specialized registry or title certificate, if any]:

(a) An acquisition security right in an asset other than inventory, consumer goods, intellectual property or rights of a licensee under a licence of intellectual property, held by the grantor [primarily] for sale or licence in the ordinary course of the grantor's business or used or intended to be used by the grantor [primarily] for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor, provided that:

(i) The acquisition secured creditor is in possession of or has acquired the asset; or

(ii) A notice with respect to the acquisition security right is registered in the Registry within [a short period of time, such as 30 days, to be specified by the enacting State] after the grantor obtains possession of or acquires the asset;

[5] This section includes the unitary-approach recommendations of the *Secured Transactions Guide*. If a State prefers to adopt the non-unitary approach recommendations, it may wish to consider implementing instead recommendations 187-202 of the *Secured Transactions Guide*. [In particular, States may wish to consider doing so if they have implemented regional legislation along the Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (the "Late Payment Directive"), article 9 of which, provides that "Member States shall provide in conformity with the applicable national provisions designated by private international law that the seller retains title to goods until they are fully paid for if a retention of title clause has been expressly agreed between the buyer and the seller before the delivery of the goods".]

[6] A State may adopt alternative A or alternative B of this article.

(b) An acquisition security right in inventory, intellectual property or rights of a licensee under a licence of intellectual property, held by the grantor [primarily] for sale or licence in the ordinary course of the grantor's business has priority over a competing non-acquisition security right created by the grantor, provided that:

(i) The acquisition secured creditor is in possession of or has acquired the asset; or

(ii) Before the grantor obtains possession of or acquires the asset:

a. A notice with respect to the acquisition security right registered in the Registry; and

b. A notice that is sent by the acquisition secured creditor is received by the non-acquisition secured creditor that has registered a notice in the Registry with respect to a security right created by the grantor in an asset of the same kind, stating that the acquisition secured creditor has or intends to acquire an acquisition security right and describing the asset sufficiently to enable the non-acquisition secured creditor to identify the asset that is the object of the acquisition security right; and

(c) An acquisition security right in consumer goods, intellectual property or rights of a licensee under a licence of intellectual property, used or intended to be used by the grantor [primarily] for personal, family or household purposes, has priority over a competing non-acquisition security right created by the grantor in the same asset.

2. A notice that is sent in accordance with subparagraph 1(b)(ii)b. may cover acquisition security rights under multiple transactions between the same parties without the need to identify each transaction and is sufficient only for security rights in assets of which the grantor obtains possession or which the grantor acquires within [a period of time, such as five years, to be specified by the enacting State] after the notice is received.

Alternative B

Except as provided in article 43:

(a) An acquisition security right in an asset other than consumer goods, intellectual property or rights of a licensee under a licence of intellectual property, used or intended to be used by the grantor [primarily] for personal, family or household purposes, has priority as against a competing non-acquisition security right created by the grantor, provided that:

(i) The acquisition secured creditor is in possession of or acquires the asset; or

(ii) A notice with respect to the acquisition security right is registered in the Registry within [a short period of time, such as 30 days, to be specified by the enacting State] after the grantor obtains possession of or acquires the asset; and

(b) An acquisition security right in consumer goods, intellectual property or rights of a licensee under a licence of intellectual property, used or intended to be used by the grantor [primarily] for personal, family or household purposes, has

priority over a competing non-acquisition security right created by the grantor in the same asset.

[*Note to the Working Group: The Working Group may wish to note that subparagraph (b)(ii)b of this article refers to a notice received by an earlier registered inventory financier and consider whether the receipt rule should apply to any notice sent to a person under the draft Model Law.*]

Article 48. Competing acquisition security rights

1. Subject to paragraph 2, the priority between competing acquisition security rights is determined according to article 41.

2. An acquisition security right of a seller or lessor, or a licensor of intellectual property, that was made effective against third parties within the period specified in article 47, subparagraph (a)(ii), has priority over a competing acquisition security right of a secured creditor other than a seller or lessor, or a licensor of intellectual property.

Article 49. Acquisition security rights competing with the rights of judgement creditors

An acquisition security right that is made effective against third parties within the period specified in article 47, subparagraph (a)(ii), has priority over the rights of a judgement credit or that would otherwise have priority under article 46.

Article 50. Acquisition security rights in proceeds[7]

Alternative A

1. A security right in proceeds of an asset other than inventory, consumer goods, intellectual property or rights of a licensee under a licence of intellectual property, held by the grantor [primarily] for sale or licence in the ordinary course of the grantor's business or used or intended to be used by the grantor [primarily] for personal, family or household purposes, has the same priority as the acquisition security right in that asset.

2. A security right in proceeds of inventory, intellectual property or rights of a licensee under a licence of intellectual property, held by the grantor [primarily] for sale or licence in the ordinary course of the grantor's business, has the same priority as the acquisition security right in that asset, except where the proceeds take the form of receivables, negotiable instruments, or rights to payment of funds credited to a bank account.

3. A security right in proceeds has the same priority as the security right in that asset, provided that the acquisition secured creditor notifies non-acquisition secured creditors that, before the proceeds arose, the acquisition secured creditor registered a notice with respect to assets of the same kind as the proceeds in the Registry.

[7] A State may adopt alternative A of this article, if it adopts alternative A of article 47, or alternative B of this article if it adopts alternative B of article 47.

Alternative B

Notwithstanding article 47, the priority of an acquisition security right in a tangible asset, intellectual property or rights of a licensee under a licence of intellectual property that is effective against third parties does not extend to its proceeds.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, as the draft Model Law does not deal with insolvency-related matters, with the exception of article 44, which may need to be deleted (see note to article 44), no article has been included in the draft Model Law to deal with the application of these special priority rules in the case of insolvency (rec. 186 of the* Secured Transactions Guide*). However, there is nothing in these articles to imply that insolvency law will not operate against the background of secured transactions law and thus that these provisions will not apply to acquisition security rights in the case of insolvency.*]

Article 51. Priority of a security right in the case of advance registration

The priority of a security right with respect to which a notice has been registered in the Registry before the conclusion of a security agreement or, in the case of a security right in a future asset, before the grantor acquires rights in the asset or the power to encumber it, is determined according to the time of registration.

[*Note to the Working Group: The Working Group may wish to note that this article has been included in the draft Model Law pursuant to a decision by the Working Group (see A/CN.9/830, para. 86).*]

Article 52. Subordination

1. A person may at any time subordinate its priority under this Law in favour of any existing or future competing claimant without the need for the beneficiary to be a party to the subordination.

2. Subordination does not affect the rights of competing claimants other than the person subordinating its priority and the beneficiary of the subordination.

[*Note to the Working Group: The Working Group may wish to consider whether a subordination agreement has to be in writing or may also be oral. The Working Group may also wish to consider whether the Guide to Enactment should explain whether, if third-party effectiveness of the security right has been established by registration of a notice, an amendment notice may be registered to reflect the new order of priority. The Working Group may also wish to note that the Guide to Enactment will explain that a subordination agreement may be between a secured creditor and a grantor, between two or more secured creditors, or between a secured creditor and another competing claimant (e.g. a judgement creditor or an insolvency representative). The Guide to Enactment will also discuss circular priority problems that may result from subordination agreements. The Working Group may wish to consider that the rule that an agreement cannot affect third parties is not enough to cover unilateral subordination and thus paragraph 2 of this article is necessary and should be retained.*]

Article 53. Future advances, future encumbered assets and maximum amount

1. Subject to the rights of judgement creditors under article 46, the priority of a security right extends to all secured obligations, including obligations incurred after the security right became effective against third parties.

2. The priority of a security right covers all encumbered assets described in a notice registered in the Registry, irrespective of whether they are acquired by the grantor or come into existence before or after the time of registration.

[3. The priority of the security right is limited to the maximum amount set out in the notice registered in the Registry.][8]

[*Note to the Working Group: The Working Group may wish to note that this article is based on recommendations 97-99 of the* Secured Transactions Guide.]

Article 54. Irrelevance of knowledge of the existence of a security right

Knowledge of the existence of a security right on the part of a secured creditor does not affect its priority under this Law.

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, although the fact that knowledge of the existence of a security right does not affect priority is clear from the priority rules of the draft Model Law, it is repeated in article 54 because of the need to emphasize the importance of determining priority on the basis of objective facts rather than subjective knowledge.*]

B. Asset-specific rules

Article 55. Negotiable instruments

1. A security right in a negotiable instrument that is made effective against third parties by possession of the instrument has priority over a security right in the instrument that is made effective against third parties by registration of a notice in the Registry.

2. A buyer or other consensual transferee of an encumbered negotiable instrument acquires its rights free of the security right that is made effective against third parties by registration of a notice in the Registry if the buyer or other consensual transferee:

(a) Qualifies as a protected holder [the enacting State may wish to use any other term used in its law]; or

(b) Takes possession of the negotiable instrument and gives value [the enacting State may wish to use any other term used in its law] without knowledge that the sale or other transfer is in violation of the rights of the secured creditor under the security agreement.

[8] This provision will be necessary if the enacting State implements article 6, subpara. 3(e), and 34, subpara. (e).

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that this article is based on recommendations 101 and 102 of the* Secured Transactions Guide *and any drafting changes are intended to ensure that paragraph 1 deals only with conflicts between security rights and paragraph 2 deals with the issue whether buyers or other transferees acquires its rights free or subject to a security right (see A/CN.9/830, para. 49) The Guide to Enactment will also explain that the reference to "good faith" has been deleted as the absence of knowledge amounted essentially to good faith and the concept of good faith is used in the draft Model Law only to reflect an objective standard of conduct (see A/CN.9/830, para. 50).*]

Article 56. Rights to payment of funds credited to a bank account

1. A security right in a right to payment of funds credited to a bank account that is made effective by the secured creditor becoming the account holder has priority over a competing security right that is made effective against third parties by any other method.

2. A security right in a right to payment of funds credited to a bank account of the depositary bank has priority over a competing security right made effective by any method other than by the secured creditor becoming the account holder.

3. A security right in a right to payment of funds credited to a bank account that is made effective against third parties by a control agreement has priority over a competing security right other than a security right of the depositary bank or a security right that is made effective against third parties by any method other than by the secured creditor becoming the account holder.

4. The order of priority among competing security rights in a right to payment of funds credited to a bank account that are made effective against third parties by control agreements is determined on the basis of the time of conclusion of the control agreements.

5. A security right in a right to payment of funds credited to a bank account that is made effective against third parties by a method other than registration of a notice in the Registry has priority over a competing security right made effective against third parties by such registration.

6. A depositary bank's right under other law to set off obligations owed to it by the grantor against the grantor's right to payment of funds credited to a bank account maintained with the depositary bank has priority as against a security right in the right to payment of funds credited to the bank account, except a security right that is made effective against third parties by the secured creditor becoming the account holder.

7. A transferee of funds from a bank account pursuant to a transfer initiated or authorized by the grantor acquires its rights free of a security right in the right to payment of funds credited to the bank account, unless the transferee has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

8. Paragraph 7 does not adversely affect the rights of transferees of funds from bank accounts under [the enacting State to specify the relevant law].

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will clarify that this article will apply to a priority conflict between a security right in a right to payment of funds credited to a bank account as original collateral and a security right in a right to payment of funds credited to a bank account as proceeds which, according to article 17, paragraph 1 (A/CN.9/WG.VI/WP.63), is automatically effective if the security right in the original collateral is effective against third parties.*]

Article 57. Money

1. A transferee of encumbered money acquires its rights free of the security right, unless that person has knowledge that the transfer violates the rights of the secured creditor under the security agreement.

2. This article does not adversely affect the rights of persons in possession of money under [the enacting State to specify the relevant law].

Article 58. Negotiable documents and tangible assets covered

1. Subject to paragraph 2, a security right in a tangible asset made effective against third parties by possession of the negotiable document covering that asset has priority over a competing security right made effective against third parties by registration of a notice in the Registry or by possession of the negotiable document or the assets covered thereby.

2. Paragraph 1 does not apply to a security right in a tangible asset other than inventory if the security right of the secured creditor not in possession of the negotiable document was made effective against third parties before the earlier of:

(a) The time that the asset became covered by the negotiable document; and

(b) The time of conclusion of an agreement between the grantor and the secured creditor in possession of the negotiable document providing for the asset to be covered by a negotiable document so long as the asset became so covered within [a short period of time, such as 30 days, to be specified by the enacting State] from the date of the agreement.

3. A transferee of an encumbered negotiable document under [the enacting State to specify the relevant law] acquires its rights free of a security right in the negotiable document and the tangible assets covered thereby that is made effective against third parties by registration of a notice in the Registry or by possession of the documents or the assets covered thereby.

Article 59. Certain licensees of intellectual property

[Article 42, paragraph 6, does not affect any rights that a secured creditor may have [as an owner or licensor of intellectual property] under [the enacting State to specify the relevant law relating to intellectual property.]

[*Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will refer, with respect to this article, to the discussion of rights of certain licensees in the* Intellectual Property Supplement *(see paras. 193-212) and explain in particular that the ordinary course of business approach is not drawn from intellectual property law, which does not distinguish in this respect*

between an exclusive and non-exclusive licence but rather focuses on whether a licence is authorized or not and thus, for example, if the grantor does not have the right to grant licences, the licensee acquires its rights under the licence subject to the security right (see Intellectual Property Supplement, *paras. 200 and 201).*]

Article 60. Non-intermediated securities

1. A security right in certificated non-intermediated securities made effective against third parties by the secured creditor's possession of the certificate has priority over a competing security right by the same grantor in the same securities made effective against third parties by registration of a notice in the Registry.

2. A security right in uncertificated non-intermediated securities made effective against third parties by a notation of the security right or registration of the name of the secured creditor as the holder of the securities in the books maintained for that purpose by or on behalf of the issuer has priority over a security right in the same securities made effective against third parties by any other method.

3. A security right in uncertificated non-intermediated securities made effective against third parties by the conclusion of a control agreement has priority over a security right in the same securities made effective against third parties by registration of a notice in the Registry.

4. Priority among security rights in uncertificated non-intermediated securities made effective against third parties by the conclusion of control agreements is determined according to the temporal order in which the control agreements were concluded.

Option A

5. This article does not adversely affect the rights of holders of non-intermediated securities under [the enacting State to specify the relevant law relating to the transfer of securities].

Option B

5. A buyer or other consensual transferee of encumbered non-intermediated securities under [the enacting State to specify the relevant law relating to the transfer of securities] acquires its rights free of the security right.